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7 Attorneys for Complainant

8 **BEFORE THE**
9 **BOARD OF REGISTERED NURSING**
10 **DEPARTMENT OF CONSUMER AFFAIRS**
STATE OF CALIFORNIA

11 In the Matter of the Accusation Against:

Case No. 2009-105

12 CHERI ANNE WAGONER-SWARTHOUT
13 1906 Duranzno Drive
Hacienda Heights, CA 91745
14
15 Registered Nurse License No. 496069
16 Public Health Nurse Advanced Certification
No. 50897
17 Nurse Practitioner Advanced Certification
No. 9755
18

A C C U S A T I O N

19 Respondent.

20 Complainant alleges:

21 **PARTIES**

22 1. Ruth Ann Terry, M.P.H., R.N. (Complainant) brings this Accusation
23 solely in her official capacity as the Executive Officer of the Board of Registered Nursing,
24 Department of Consumer Affairs (Board).

25 2. On or about August 31, 1993, the Board of Registered Nursing issued
26 Registered Nurse License Number 496069 to Cheri Anne Wagoner-Swarthout (Respondent).
27 The Registered Nurse License was in full force and effect at all times relevant to the charges
28 brought herein and will expire on January 31, 2009, unless renewed.

3. On or about November 3, 1993, the Board of Registered Nursing issued Public Health Nurse Advanced Certification Number 50897 to Respondent. The Public Health Nurse Advanced Certification was in full force and effect at all times relevant to the charges brought herein and will expire on January 31, 2009, unless renewed.

4. On or about March 25, 1998, the Board of Registered Nursing issued Nurse Practitioner Advanced Certification Number 9755 to Respondent. The Nurse Practitioner Advanced Certification was in full force and effect at all times relevant to the charges brought herein and will expire on January 31, 2009, unless renewed.

JURISDICTION

5. This Accusation is brought before the Board under the authority of the following laws. All Section references are to the Business and Professions Code unless otherwise indicated.

6. Section 118, subdivision (b), states:

“The suspension, expiration, or forfeiture by operation of law of a license issued by a Board in the department, or its suspension, forfeiture, or cancellation by order of the board or by order of a court of law, or its surrender without the written consent of the board, shall not, during any period in which it may be renewed, restored, reissued, or reinstated, deprive the board of its authority to institute or continue a disciplinary proceeding against the licensee upon any ground provided by law or to enter an order suspending or revoking the license or otherwise taking disciplinary action against the licensee on any such ground.”

7. Section 490 states, in pertinent part:

“A board may suspend or revoke a license on the ground that the licensee has been convicted of a crime, if the crime is substantially related to the qualifications, functions, or duties of the business or profession for which the license was issued. A conviction within the meaning of this section means a plea or verdict of guilty or a conviction following a plea of nolo contendere. Any action which a board is permitted to take following the establishment of a conviction may be taken when the time for appeal has elapsed, or the judgment of conviction has been affirmed on appeal, or when an order granting probation is made suspending the imposition

1 of sentence, irrespective of a subsequent order under the provisions of Section 1203.4 of the
2 Penal Code.”

3 8. Section 810 states, in pertinent part in conjunction with section 2761,
4 subdivision (a):

5 “(a) It shall constitute unprofessional conduct and grounds for
6 disciplinary action, including suspension or revocation of a license or certificate, for a health
7 care professional to do any of the following in connection with his or her professional activities:

8 (1) Knowingly present or cause to be presented any false or fraudulent
9 claim for the payment of a loss under a contract of insurance.

10 (2) Knowingly prepare, make, or subscribe any writing, with intent to
11 present or use the same, or to allow it to be presented or used in support of any false or
12 fraudulent claim.”

13

14 9. Section 2750 of the Business and Professions Code (Code) provides, in
15 pertinent part, that the Board may discipline any licensee, including a licensee holding a
16 temporary or an inactive license, for any reason provided in Article 3 (commencing with section
17 2750) of the Nursing Practice Act.

18 10. Section 2761 states, in pertinent part in conjunction with section 810,
19 subdivisions (a)(1) and (a)(2):

20 “The board may take disciplinary action against a certified or licensed
21 nurse or deny an application for a certificate or license for any of the following:

22 “(a) Unprofessional conduct, which includes, but is not limited to, the
23 following:

24

25 “(d) Violating or attempting to violate, directly or indirectly, or assisting
26 in or abetting the violating of, or conspiring to violate any provision or term of this chapter [the
27 Nursing Practice Act] or regulations adopted pursuant to it.

28

1 “(f) Conviction of a felony or of any offense substantially related to the
2 qualifications, functions, and duties of a registered nurse, in which event the record of the
3 conviction shall be conclusive evidence thereof. . . .”

4 11. Section 2762 states, in pertinent part:

5 “In addition to other acts constituting unprofessional conduct within the
6 meaning of this chapter [the Nursing Practice Act], it is unprofessional conduct for a person
7 licensed under this chapter to do any of the following:

8 (c) Be convicted of a criminal offense involving the prescription,
9 consumption, or self-administration of any of the substances described in subdivisions (a) and
10 (b) of this section, or the possession of, or falsification of a record pertaining to, the substances
11 described in subdivision (a) of this section, in which event the record of the conviction is
12 conclusive evidence thereof.”

13 12. Section 2764 of the Code provides, in pertinent part, that the expiration of
14 a license shall not deprive the Board of jurisdiction to proceed with a disciplinary proceeding
15 against the licensee or to render a decision imposing discipline on the license. Under section
16 2811(b) of the Code, the Board may renew an expired license at any time within eight years after
17 the expiration.

18 13. California Code of Regulations, title 16, section 1444, states, in pertinent
19 part:

20 “A conviction or act shall be considered to be substantially related to the
21 qualifications, functions or duties of a registered nurse if to a substantial degree it evidences the
22 present or potential unfitness of a registered nurse to practice in a manner consistent with the
23 public health, safety, or welfare. Such convictions or acts shall include but not be limited to the
24 following:

25 “(a) Assaultive or abusive conduct including, but not limited to, those
26 violations listed in subdivision (d) of Penal Code Section 11160.

27 “(b) Failure to comply with any mandatory reporting requirements.

28 “(c) Theft, dishonesty, fraud, or deceit.

1 “(d) Any conviction or act subject to an order of registration pursuant to
2 Section 290 of the Penal Code.”

3 14. Respondent is subject to disciplinary action under section 490, as defined
4 by California Code of Regulation, title 16, section 2521 which states, in pertinent part:

5 “For the purposes of denial, suspension, or revocation of a license
6 pursuant to Division 1.5 (commencing with Section 475) of the Business and Professions Code,
7 a crime or act shall be considered to be substantially related to the qualifications, functions or
8 duties of a licensed vocational nurse if to a substantial degree it evidences present or potential
9 unfitness of a licensed vocational nurse to perform the functions authorized by his license in a
10 manner consistent with the public health, safety, or welfare. Such crimes or acts shall include but
11 not be limited to those involving the following:

12 “(c) Violating or attempting to violate, directly or indirectly, or assisting
13 in or abetting the violation of, or conspiring to violate any provision or term of Chapter 6.5,
14 Division 2 of the Business and Professions Code.

15 “(e) Conviction of a crime involving fiscal dishonesty.”

16 15. Section 125.3 provides, in pertinent part, that the Board may request the
17 administrative law judge to direct a licentiate found to have committed a violation or violations
18 of the licensing act to pay a sum not to exceed the reasonable costs of the investigation and
19 enforcement of the case.

20 **FIRST CAUSE FOR DISCIPLINE**

21 **(Conviction of a Substantially Related Crime)**

22 16. Respondent is subject to disciplinary action under sections 2761,
23 subdivision (f), and 490, as defined by California Code of Regulations, title 16, section 2521, in
24 that Respondent was convicted of a crime that is substantially related to the qualifications,
25 functions or duties of a registered nurse, as follows:

26 a. On or about August 21, 2007, after pleading *nolo contendere*, Respondent
27 was convicted of one felony count of violating Penal Code section 487(a) [grand theft of
28 personal property] in a criminal proceeding entitled *The People of the State of California v.*

1 *Cheri Anne Swarthout aka Cheri Anne Wagoner* (Super. Ct. Los Angeles County, 2006, No.
2 FWV037882). The Court ordered Respondent to appear at the Penal Code section 859(a)
3 sentencing hearing on February 4, 2009, at 8:30 a.m. in Department R19.

4 b. The circumstances surrounding the conviction are that on or about
5 January 23, 2005 through September 13, 2005, Respondent violated Penal Code section 487(a)
6 [grand theft of personal property], a felony by unlawfully taking money and personal property of
7 a value exceeding Four Hundred Dollars (\$400.00). A total of Twelve Thousand Three Hundred
8 Eighty-Two dollars and Ninety-Two cents (\$12,382.92), the property of Intercare Insurance
9 Service, was taken by Respondent. Intercare Insurance Services referred Respondent's claim to
10 the California Department of Insurance Fraud Division for investigation and Respondent was
11 arrested.

12 **SECOND CAUSE FOR DISCIPLINE**

13 **(Unprofessional Conduct-Making Fraudulent Claims in connection with Insurance Claim)**

14 17. Respondent is subject to disciplinary action under pursuant to Section
15 2761, subdivision (a), in that on or about January 23, 2005 through September 13, 2005,
16 Respondent committed acts of unprofessional conduct. Complainant refers to, and by this
17 reference incorporates, the allegations set forth above in paragraph 16, subparagraphs (a) and (b),
18 inclusive, as though set forth fully.

19 **THIRD CAUSE FOR DISCIPLINE**

20 **(Violating Provisions of the Nursing Practice Act)**

21 18. Respondent is subject to disciplinary action pursuant to Code section
22 2761, subdivision (d) for violating provisions of the Nursing Practice Act (Code § 2750 et seq.).
23 Complainant refers to, and by this reference incorporates, the allegations set forth above in
24 paragraphs 16-17, inclusive, as though set forth fully.

25 **PRAYER**

26 WHEREFORE, Complainant requests that a hearing be held on the matters herein
27 alleged, and that following the hearing, the Board of Registered Nursing issue a decision:

- 28 1. Revoking or suspending Registered Nurse License Number 496069,

1 issued to Respondent;

2 2. Revoking or suspending Public Health Nurse Advanced Certification
3 Number 50897, issued to Respondent;

4 3. Revoking or suspending Nurse Practitioner Advanced Certification
5 Number 9755, issued to Respondent;

6 4. Ordering Cheri Anne Wagoner-Swarthout to pay the Board of Registered
7 Nursing the reasonable costs of the investigation and enforcement of this case, pursuant to Code
8 section 125.3; and

9 5. Taking such other and further action as deemed necessary and proper.

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11 DATED: 11/7/08

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RUTH ANN TERRY, M.P.H., R.N.
Executive Officer
Board of Registered Nursing
Department of Consumer Affairs
State of California
Complainant

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